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COMMITTEE ON THE RIGHTS OF THE CHILD

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SUMMARY RECORD OF THE 294th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 23 May 1996, at 10 a.m.

Chairperson: Mrs. BELEMBAOGO

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Zimbabwe (continued) (CRC/C/3/Add.35; CRC/C/12/WP.7; HRI/CORE/1/Add.55; replies of the Government of Zimbabwe, document distributed without a symbol)

1. At the invitation of the Chairperson, the members of the Zimbabwean delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited Mr. Stamps, Minister for Health and Child Welfare of Zimbabwe, to continue replying to questions 9, 10 and 11 of the List of issues (CRC/C/12/WP.7) concerning marriageable age, the right to redress and the age of criminal responsibility.

3. Mr. STAMPS, referring to the ages at which marriage was authorized under marriage law and customary law, acknowledged that there were major differences between Zimbabwean traditions and Western customs. During the colonial period, there had been a clear demarcation between, on the one hand, the settlers, whose laws and customs were influenced by English and South African law and, on the other hand, the various indigenous peoples. In 1982, the Zimbabwean authorities had intended to set the marriageable age at 18 for both boys and girls, thereby bringing it into line with the age of majority. The plan had not succeeded; even the population of European origin had refused to raise the marriageable age, arguing that, in view of the growing number of premarital relationships, it was better officially to sanction the relationship of a couple rather than contribute to an increase in the number of children born out of wedlock. In Africa, the family structure and, in particular, the extended family, predominated. However, a girl could marry according to customary law, for example, under the system of polygamy, which was recognized by the legal system and by inheritance law, and, at the same time, live according to Western law. Furthermore, both written legislation and customary law allowed a young man under 18 years of age to marry with the consent of his parents. The Children's Protection and Adoption Act set the minimum age of consent to sexual relations at 16.

4. With regard to the right to redress, he said that the age of majority was 18 - or younger in the case of a married person - at which point an individual could conduct his own defence during legal proceedings and was entitled to assistance from an official of the Ministry of Public Service, Labour and Social Welfare. The Government was considering changing the Children's Protection and Adoption Act to authorize non-governmental organizations to represent children in those circumstances. The Ministry of Public Service, Labour and Social Welfare would be responsible for ensuring that the child was properly represented.

5. With regard to the age of criminal responsibility, he said that, under the law, which was derived from Roman Dutch law, a child under the age of seven was considered incapable of committing a crime. There was a rebuttable presumption that children between 7 and 14 years of age were incapable of

committing crimes. However, there had been several cases where children under 14 years of age had been suspected of rape, but the courts had been unable to charge them under the law.

6. The CHAIRPERSON invited the members of the Committee to ask additional questions of the Zimbabwean delegation.

7. Mrs. SANTOS PAIS pointed out that the law could help to bring about change, increase the population's awareness of various societal problems and provide solutions. In her opinion, it was unacceptable for boys and girls not to be treated equally. She was also concerned by the number of early marriages. She felt that the differences between the marriageable ages authorized under the law, and under customary law, gave the population the impression that it was normal to marry at the age of 12 or 14. She noted that a child needed his parents' consent or the assistance of an adult to marry, testify or obtain legal redress but, if he was married, he had all the responsibilities of an adult even though he had not reached the age of majority. Authorizing early marriages for girls, gave them increased duties and responsibilities but deprived them of the possibility of exercising their fundamental right to a full life. Citing a UNICEF document which reported that several studies carried out by the Zimbabwean Ministry of Health and Child Welfare had shown that at least one of every two women gave birth to a child before the age of 20 and that pregnant girls were sometimes expelled from school, she encouraged the Zimbabwean Government to do all it could to change that situation and to set the marriageable age at 18 for both boys and girls.

8. She also noted a contradiction in the fact that a child could marry before the age of 18, but the minimum age of sexual consent was set at 16, a discrepancy which should be corrected.

9. With regard to cases of children who were the victims of sexual abuse within their families, she wondered how parents could be expected to fulfil their legal responsibility to assist their children when the latter's rights were violated. The State, which was responsible for child welfare, should take steps to remedy that situation.

10. She asked whether the Government planned to raise the age of criminal responsibility, which was too low. In her opinion, the law should also forbid corporal punishment of children and sentences of death or life imprisonment for minors under the age of 18. The law should reflect article 4 of the Convention, which stated that States parties should undertake all appropriate legislative measures for the implementation of the rights recognized in the Convention.

11. Mr. HAMMARBERG associated himself with the remarks made by Mrs. Santos Pais. Certainly, the practices and local customs of many societies must be taken into account in implementing the universal standards enshrined in the Convention, but the primary principle of the Convention - the best interests of the child - must take precedence. In Zimbabwe, on the one hand, society encouraged young people to marry and have children at an early age, but, on the other, pregnant girls were at risk of being stigmatized. Was it, then, better for them to marry in order not to be ostracized? That

dilemma was being faced in many countries, in addition to Zimbabwe. It was also important to remember the health and schooling problems which that situation could entail for the girl. Furthermore, the resulting children would be at a disadvantage owing to their mother's lack of maturity. The law should, therefore, combat those situations and, in particular, protect girls whose families pledged them in marriage. The law should also be supported by social measures contributing to the liberation of women, as the Beijing Conference had recommended. He therefore shared the opinion of Mrs. Santos Pais and joined her in encouraging the authorities to consider, above all, the best interests of the child.

12. Mrs. EUFEMIO said that it was important to bear in mind article 5 of the Convention, under which States parties were to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his rights. It was, of course, difficult for parents who had not had an education to take into account the child's evolving capacities while at the same time observing traditions. In any case, it was a matter of breaking a vicious circle which persisted from generation to generation and of increasing the awareness of the population in order to make those traditions less rigid. She, too, shared the opinions of Mrs. Santos Pais and felt that it was only through the law that attitudes could be changed.

13. Mrs. KARP, referring to the parental consent required for the marriage of under-age children, said that it was the courts, rather than the parents, which should decide in such cases. Quite often, parents gave their children in marriage without regard for the children's own interests, and cases of girls married against their will were very frequent.

14. The CHAIRPERSON invited the Zimbabwean delegation to reply to the questions and additional remarks of the Committee members.

15. Mr. STAMPS (Zimbabwe) said that, according to custom, a girl could not marry except in the presence of a male member of her family. Tradition also stipulated that, once married, a girl belonged not only to her husband but also to his family.

16. With regard to the evolving capacities of the child, he emphasized that the fact that two families consented to the marriage of minors under 16 years of age did not mean that the latter were authorized to have sexual relations. On the contrary, such relations were strictly forbidden. In fact, it was more a question of an engagement than of a marriage. The agreement between the two families was important, particularly when they followed different traditions. He agreed with Mrs. Karp that it should be the courts which authorized the marriage of a minor. In practice, any minor who did not have his parent's consent to marry could apply to the courts. In that case, a Supreme Court judge was appointed as the minor's guardian under Roman Dutch Law. Officials of the Ministry of Public Service, Labour and Social Welfare were then responsible for monitoring the implementation of the judge's decision.

17. To clear up another misunderstanding, he explained that pregnant girls were not excluded from the education system but were simply transferred to another establishment to save them from being stigmatized, a practice which

was in the best interests of the child. Corporal punishment in schools was still permitted in Zimbabwe, but many teachers had already been brought before the courts for excessive corporal punishment and the protests raised against that system, together with the activities of pressure groups, gave hope for change in that area. In any case, the Ministry of Education was giving careful consideration to the question of corporal punishment and to the situation of pregnant girls in school.

18. In order to encourage the acceptance at community level of a possible increase in the legal age for marriage, the Family Planning Council was encouraging young people to delay their first sexual relations, not only in order to prevent births but also to curb the spread of AIDS. All community awareness activities were to be encouraged since, if nothing was done to combat harmful traditions, they would continue to be perpetuated. Finally, with regard to concrete measures for encouraging a change in attitudes, he said that education in the rights of the child had long been part of school curricula in Zimbabwe.

19. The CHAIRPERSON invited the Committee to proceed to consideration of the general principles set forth in articles 2, 3, 6 and 12 of the Convention (items 12 to 15 of the List of issues).

20. Mr. HAMMARBERG requested further information on the concrete implementation of the principles of non-discrimination and the best interests of the child. Despite progress in the area of legislation, racially-based social differentiation apparently remained very strong in Zimbabwe, as was shown, for example, in the case of access to education and to various careers. He asked now, in practice, those imbalances were being combated. He also recommended a detailed study of existing procedures to ensure that the best interests, and the opinion, of the child were taken into consideration, particularly, in cases of conflict between children and their parents.

21. Mrs. SANTOS PAIS also requested an explanation of those two points. She noted that article 23 of the Zimbabwean Constitution, on non-discrimination, seemed to apply only to civil servants. She asked how, under those circumstances, respect for the principle of non-discrimination was being ensured in private institutions and, in particular, in the schools. Furthermore, article 23 of the Constitution authorized dispensations, which seemed contrary to the provisions of the Convention. In particular, the rules of customary law on questions of inheritance discriminated against blacks, children born out of wedlock and girls and allowed a child born out of wedlock to take his father's name only with the latter's consent. In her opinion, since article 2 of the Convention did not list all the areas in which discrimination was prohibited, national legislation should reflect all the necessary criteria.

22. She asked what steps were being taken to ensure the fundamental rights of AIDS orphans, whose numbers would reach nearly 600,000 by the year 2000.

23. She also requested further information on the measures taken to ensure that the courts correctly interpreted the idea of the best interests of the child and on procedures for considering the child's opinion in cases of conflict, an area in which the State party's report was lacking.

24. Mrs. EUFEMIO noted that, according to the report, there had been no evaluation of the manner in which the principle of the best interests of the child was taken into account and said that, in November 1995, the UNICEF International Child Development Centre, had published a study of that questio in Zimbabwe. Focusing on decisions with regard to child care, that study concluded that the best interests of the child were often used by adults for their own ends.

25. Mr. KOLOSOV said that there was a contradiction in the minimum age for conscription, which was 18 according to paragraph 51 of Zimbabwe's report and 16 according to paragraph 242 of the same report. If the minimum age was 16, were there plans to raise it to 18, as was recommended in the draft additional protocol currently in preparation? If the Government intended to raise the legal age of majority, it should also do so for that of conscriptio in order to avoid any discrimination.

26. Mrs. KARP, referring to paragraph 59 of the report, which stated that abortion was permitted only in limited circumstances, asked whether parental consent to an abortion was required or whether a pregnant girl could make the decision on her own. Paragraph 60 of the report said that children did not always have the freedom to air their views because of cultural and societal attitudes and concepts of parental discipline; she noted that it was the State's responsibility to intervene to change attitudes. She therefore asked for more information on concrete measures taken by the Zimbabwean Government with a view to making the population aware of the importance of children's participation in decisions concerning daily life, not only in cases of conflict.

27. Mr. STAMPS (Zimbabwe) said that the Constitution expressly forbade discrimination and in particular, under constitutional amendment No. 11, gender-based discrimination. However, exceptions did exist.

28. The question of racial discrimination was very important in Zimbabwe because of the segregation which had been practised there until 1980. For example, some private schools raised their admission fees to prevent the enrolment of black children. At the political level, the Government was opposed to the élitist practices of private schools and, as a concrete measure, the Ministry of Education was considering calling for a reduction i the fees of private schools, but it must be careful not to infringe the principle of free competition that was part of the economic reform programme. There were also cultural associations and sports clubs reserved for whites, which did not facilitate integration measures. To combat that proble the Government lent its support to social action groups working for integration and was developing projects in areas where there was insufficient legislatio but the task remained a very complex one.

29. The laws on racial discrimination applied not only to civil servants, to several areas. For example, all racially-based discrimination in company recruitment, as well as in clinics and private schools, was prohibited. It was true that many social welfare institutions were in private hands, but th received major State funding, which made it possible to monitor their activities. Others were administered by NGOs, which tried to implement fair hiring practices.

30. With regard to the question on "AIDS orphans", he said that, in the first place, the expression could hardly be more ill-chosen since the children in question were immediately assumed to have AIDS. It would be better to refer to them as orphaned children of parents with AIDS. Zimbabwe had set up a community system, based on the extended family, which worked fairly well. However, there were problems when those in whose care the child was placed, particularly elderly persons, were overwhelmed by the number of orphans which they had to raise, or when an extended family was unwilling to care for the child of another family. A home environment and community life were essential to the proper development of the child. The Churches were working to find a solution to the problem by promoting the idea of the best interests of the child.

31. With regard to the possibility of using available buildings to house Mozambican refugees, he said that those buildings were properly equipped and families could live there, but they were used primarily as shelters for street children, most of whom were orphans.

32. The heads of commercial agricultural establishments tried to provide their employees with information on infection by the AIDS virus and to assist the orphaned children of parents with AIDS; some of them lent their support to programmes for those children. Nevertheless, discrimination against people with AIDS was quite real and too often, for lack of information, people still believed that the illness was transmitted through contact with those infected with the virus; for that reason, nurses no longer wore their uniforms in public for fear of being stigmatized. The Government was striving to combat such ostracism.

33. The question of the discretionary powers of judges was a source of concern to some members of the Committee. It was true that there was a dilemma since, if that power was not broad enough, the best interests of the child might not be duly taken into consideration and, if it was too broad, there was a risk that the judge's decision might be too subjective. The solution was to provide judges with training to encourage them to consider cases from the point of view of the best interests of the child, and the Ministry of Justice was endeavouring to provide such training.

34. In reply to Mr. Kolosov, he agreed that there was a contradiction between the information given in paragraphs 51 and 242 of the report. The minimum age for voluntary enlistment in the army was, indeed, 18. However, conscription as such did not exist since there were often too many volunteers now that Zimbabwe was trying to reduce the numbers of its military personnel.

35. The law was very strict with regard to pregnancy termination and authorized it only when the mother or unborn child was in danger or in cases of rape. Adolescents under 16 years of age must have their mothers' permission to request treatment but, in general, a pregnant girl went to the doctor alone and the doctor kept her visit or the procedure performed confidential. It must be acknowledged that that was a weakness in the law, which was also silent on the provision of advice on contraception. Those matters were governed by customary law, which, like public opinion, would regard the performance of an abortion on a girl under 16 years of age, even with her mother's consent, as reprehensible. The Zimbabwean

authorities preferred to refrain from debating the question to avoid seriously hindering the implementation of the family planning programme for young people.

36. With regard to the principles of participation in decisions and freedom of opinion, he said that a child over 10 years of age could not undergo a surgical procedure without his own consent. In practice, and depending on whether the district in question was rural or urban, the relative decision-making power of parents - especially fathers - and children varied. Sometimes the courts intervened; for example, in at least one case, a 15-year-old girl had been given a transfusion and her life had been saved thanks to court intervention, despite the opposition of her parents, who were Jehovah's Witnesses.

37. He acknowledged that the role of parents was among the primary cultural factors to be taken into consideration, but it took time for attitudes to change and premature adoption of a law could be counterproductive. Certain illegal practices did, in fact, persist, for example, the pledging of children in fulfilment of a promise or as appeasement for a murder (Ngozi), but it was only by educating the public and providing children with secondary protection that that state of affairs could be changed.

38. In reply to the question on the right to inherit, he acknowledged that the problem was a delicate one since the traditional chiefs preferred to retain the system under which the entire inheritance went to a male, even at the expense of the widow and children of the deceased, who would then have only State assistance to fall back on, although public opinion was slowly becoming aware of the injustice of such a system. In that regard, the distribution of inheritances would be a way to combat extreme poverty. The work of women's rights movements was extremely effective in that area.

39. The CHAIRPERSON invited the members of the Committee to ask questions on items 16 to 18 of the List of issues, concerning civil rights and freedoms, and on any other point which they considered relevant.

40. Mrs. KARP returning to the question of abortion and the right to physical integrity, said she found it disturbing that excessively early pregnancy was not considered a risk factor for both the mother and the unborn child. Furthermore, some girls might not have the financial or material resources to allow them to visit a doctor or might be too frightened to act. She wondered how such girls were protected and whether there had been any consideration of the moral dilemma of a doctor who was performing an illegal act.

41. Mrs. SANTOS PAIS urged the Zimbabwean Government to continue its fight against discrimination. The principle of non-discrimination for any reason, including colour, should be enshrined in the Constitution and should not be subject to any exception.

42. Turning to the question of "moderate corporal punishment", mentioned in paragraph 68 of the report, she said that she was totally convinced that, as was stated at the end of the paragraph, "the principle of 'best interests of the child' [was] in conflict with the administering of corporal punishment". She therefore believed that it was essential that the idea of abolishing such

punishment, however moderate, should become reality. At several points, the Convention mentioned various forms of ill-treatment from which children must be protected, but it was not only a question of torture or inhuman treatment; it was also important to protect children at school and in their families and thus to implement literally article 19, paragraph 1 of the Convention. The Supreme Court had taken a positive step in 1989 by deciding to abolish court-imposed corporal punishment, but it was disturbing that the Government had reinstituted that type of punishment under certain circumstances. In the schools, the authorization of corporal punishment and the obligation to be on the alert for cases of ill-treatment were scarcely compatible. Furthermore, what constituted moderate corporal punishment? Without a definition, evaluation was too subjective. All corporal punishment should be banned in Zimbabwe.

43. Mr. HAMMARBERG said that, even if there was no loophole in the relevant legislation Zimbabwe should nevertheless specifically condemn all propaganda or dissemination of ideas inspired by theories based on the superiority of one race and all incitement to racial discrimination.

44. With regard to corporal punishment, he agreed with Mrs. Santos Pais, particularly since girls did not undergo that type of punishment and boys were, therefore, the victims of discrimination. Moreover, organizing that type of punishment as a kind of ceremony, in the presence of the school principal and recording in a register the name of the pupil who had been punished, gave the situation dramatic overtones, and the pupil was made an object of public opprobrium, which was contrary to the provisions of article 28, paragraph 2 of the Convention. Zimbabwe might follow the example of Namibia, which had banned corporal punishment in schools and provided teachers with information on ways to avoid it.

45. Mrs. KARP asked for more information on domestic violence and measures taken to increase public awareness of the problem.

46. Mr. STAMPS (Zimbabwe) began by correcting a misunderstanding: the law did not provide for advice on contraceptive measures, but it did provide for cases in which abortion was authorized. In that regard, he explained that a pregnancy could be terminated only if the mother's health was threatened. Women who underwent abortions included large numbers of minors, whose future might be seriously compromised by early childbirth. Naturally, minor girl could freely decide to keep her child if she so desired.

47. With regard to the attitude towards pregnant women who were seropositive, very little real progress had been made because of the ideological conflict between the "pro-life" advocates and the partisans of abortion at any cost. The former felt that the risk of transmission of the virus to the child was not great enough to justify an abortion, while the latter felt that it was essential to halt the spread of the virus.

48. With regard to illegal abortions, he said that a woman who had an abortion performed by a private physician would, of course, not report him. However, a doctor who practised illegal abortions in a public hospital would be brought to trial at the request of the Health Professions Council. While it was clear that illegal abortions were performed in Zimbabwe, that was

due both to the lack of adequate equipment and to the pressure exerted by certain religious groups, who were opposed to any termination of pregnancy.

49. Mrs. DHLEMBEU (Zimbabwe) said that there were not very many refugee children in Zimbabwe and that abandoned children were the responsibility of the Ministry of Social Welfare, whose job it was to place them and issue them with birth certificates. Every abandoned child of unknown parents was automatically given a name and Zimbabwean nationality.

50. Mr. STAMPS (Zimbabwe) said that, owing to the lack of resources, it was hard for hospitals and orphanages to cope with the growing numbers of abandoned children. Moreover, it was impossible to institute adoption proceedings for children whose parents could never be identified.

51. With regard to corporal punishment, he acknowledged that boys were the victims of discrimination and that the "degree of moderation" depended, not on the seriousness of the offence, but on the mood of the person inflicting the punishment. In that regard, he explained that he was personally opposed to the reintroduction into the Constitution of provisions for corporal punishment, which the Supreme Court had decided to ban.

52. Domestic violence against children and acts of violence committed by children against other children were due primarily to the scenes of violence to which children were exposed when they watched television or played violent video games. For that reason, the Government had tried to convince television stations not to show violent films during peak viewing hours.

53. The Supreme Court had ruled that children could be sentenced to capital punishment. However, no child had ever been executed in Zimbabwe, the Attorney General was personally opposed to the death penalty and judges were being encouraged not to hand down any more death sentences.

54. With regard to racial discrimination, he explained that the Law and Order Maintenance Act included provisions condemning incitement to racial hatred. The Government was more concerned by hidden discriminatory practices which were at risk of spreading in those sectors where State control had been loosened by the ongoing economic reform. Measures were being taken to combat that trend. He acknowledged that the Government should work harder to combat domestic violence, particularly when perpetrated against married women.

55. Miss MASON asked whether children placed in institutions could fully exercise their freedom of expression under article 20 of the Constitution and, in particular, whether they were able to file complaints against the authorities of those institutions.

56. With regard to the protection of privacy, it would be interesting to have more information on the implementation in practice of the principle of awarding monetary damages to the father or guardian of a child who had been a victim of seduction (para. 67 of the report). It would also be useful to have details on measures for the physical and psychological rehabilitation of children who had been victims of sexual abuse within their families or who needed special protection owing to the negligence of their parents (paras. 82 and 246). In that regard, in view of the material difficulties faced by

impoverished parents in meeting the needs of their children (paras. 83, 95, 255 and 264 of the report), it would be useful to know what measures were being taken in Zimbabwe to ensure that all children could exercise their right to an adequate standard of living in accordance with articles 26 and 27 of the Convention, and that they were not exploited economically or sexually and did not fall into delinquency. For example, was there a guaranteed minimum wage?

57. The Zimbabwean delegation might also explain what measures were being taken to protect children who were the victims of ill-treatment and the role of the police in that respect.

58. It would be interesting to know to what extent the children's homes run by NGOs (para. 235) were financed by the State and how they differed from State-run homes (see question 19 of the list of issues). She also asked what measures were being taken to increase the number of foster families, which provided a better environment for children's development than children's homes.

59. Mr. KOLOSOV asked whether many Zimbabwean children were adopted abroad and whether Zimbabwe planned to ratify The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

60. Mrs. SANTOS PAIS asked whether measures were being taken to combat the tradition of providing children with only a given name and, not a family name, and to facilitate the registration of children born in isolated regions of the country, since they needed a birth certificate to have access to certain services. She also asked for information on the conditions under which a child born out of wedlock could acquire Zimbabwean nationality, particularly with regard to the place of residence and nationality of the parents. Finally, she asked whether a foreign man or woman who married a Zimbabwean citizen could acquire Zimbabwean citizenship and be granted the right to reside in Zimbabwe.

61. Mrs. KARP asked what was the system for regular monitoring of alternative care institutions and what measures were taken to ensure that the staff who worked in those institutions had the necessary training.

The meeting rose at 1 p.m.